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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

LI-LIN SUNG LEE,

Plaintiff and Appellant,

v.

CALIFORNIA CAPITAL INSURANCE
COMPANY,

Defendant and Respondent.

A149981

(Alameda County
Super. Ct. No. RG11571734)

Plaintiff Li-Lin Sung Lee (Lee) appeals from a judgment confirming an insurance appraisal award issued in 2016. The judgment at issue was entered after this court reversed a prior judgment confirming a 2012 insurance appraisal award in *Lee v. California Capital Ins. Co.* (2015) 237 Cal.App.4th 1154 (*Lee I*). Lee now challenges the 2016 insurance appraisal award, arguing the trial court forced the appraisal panel to impermissibly resolve coverage disputes in excess of its powers by directing it not to appraise unincurred “code upgrade” costs. Lee also contends that the panel exceeded its powers by failing to assign value to all claimed losses and that the trial court erred in remanding the award back to the panel to clarify why it did not assign value to all claimed losses. Last, Lee claims the trial court erred in refusing to vacate the award due to corruption on the part of her appraiser. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In *Lee I*, this court reversed a trial court judgment confirming a 2012 insurance appraisal award valuing loss to an apartment building owned by plaintiff Lee. (*Lee I*, *supra*, 237 Cal.App.4th at p. 1176.) A fire had damaged that building in November 2010, and the property was insured at the time by defendant California Capital Insurance Company (California Capital). (*Id.* at p. 1160.) The 2012 appraisal award set out different values for Lee’s loss based on the disparate claims of Lee and California Capital regarding the scope of the loss. The award stated, among other things, that it did not address whether the items claimed were in fact damaged or destroyed by the fire or other questions of causation, or whether the items claimed existed at all. (*Id.* at p. 1163.) On appeal, this court ruled the trial court could properly require the appraisal panel to value disputed items, even when the disputes turn on issues of coverage, causation, or policy interpretation, “with the disclaimer that the award does not establish coverage or the insurer’s liability to pay.” (*Id.* at pp. 1169–1171.) However, we found the trial court erred when it ordered the panel to value items that were undamaged or demonstrably never existed. (*Id.* at pp. 1171–1174.) This latter order, we explained, “effectively prevented the appraisal panel from complying with the dictate of Insurance Code section 2071 to appraise the actual loss suffered by the insured” and instead required the panel to appraise a hypothetical loss. (*Id.* at p. 1174.)

On remand after our decision in *Lee I*, California Capital filed a motion to establish the scope of the new appraisal. As relevant here, California Capital urged the trial court to limit the scope of the appraisal to the actual cash value of the loss per Insurance Code section 2071, and to exclude potential yet unincurred costs under the “Building Ordinance Provision” of Lee’s “CIG Property Plus” endorsement—which California Capital referred to as “code upgrade costs”—without prejudice to a future

appraisal of those costs.¹ California Capital contended that, under Insurance Code section 2071, appraisers have only the power to determine the actual cash value of the insured property, and that code upgrades fell outside the scope of that determination. Also, because Lee had not repaired the property within two years after the loss per the terms of her policy, coverage for code upgrades was not available. Further, California Capital asserted that such costs would be determined by a different tribunal—the local building department with jurisdiction over the property—and the appraisal panel should not be made to speculate what that tribunal might require or otherwise determine.

Lee filed a response arguing, in part, that *Lee I*'s remand directed the trial court to alter its appraisal order in one respect only, that is, it should direct the panel not to assign values to undamaged or nonexistent items. Lee challenged California Capital's request to exclude potential yet unincurred code upgrade costs from the appraisal's scope, contending that her policy covered such costs and that the panel could determine their value just as it would value normal repair costs, i.e., by considering evidence presented about the costs associated with code upgrades. Although payment of such costs would not be due until she actually repaired the property, Lee claimed this circumstance had no bearing on the panel's power to value those costs.

In November 2015, the trial court ruled on California Capital's motion to establish the scope of the new appraisal. The court agreed with California Capital that the

¹ California Capital's policy had an "Ordinance or Law" exclusion that excluded loss or damage caused by "[t]he enforcement of any ordinance or law: [¶] (1) Regulating the construction, use or repair of any property; or (2) Requiring the tearing down of any property, including the cost of removing its debris. [¶] This exclusion . . . applies whether the loss results from: [¶] . . . [¶] (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property." Under the Building Ordinance Provision of Lee's CIG Property Plus endorsement, Lee did have some coverage for these types of losses, but only if the property "is actually repaired or replaced," and as long as such repairs were made "as soon as possible after the loss or damage, not to exceed 2 years."

appraisal should exclude potential yet unincurred code upgrade costs without prejudice to Lee later applying to compel an appraisal under the Building Ordinance Provision of her CIG Property Plus endorsement. (See *ante*, fn. 1.) Because the Building Ordinance Provision required Lee to actually have repaired or replaced the damaged portions of the building, or been ordered to comply with the laws described in the provision, and because neither of those things had occurred, it was “premature to order an appraisal of the amounts that may (or may not) be incurred in that process.” The court concluded that requiring the panel to value unincurred code upgrade costs would require it to hypothesize what government authorities would require if Lee were to repair her property someday, which would be “in the nature of a hypothetical appraisal denounced by . . . [*Lee I*].”

The court then ordered that the appraisal take place promptly after selection of an umpire, and directed the panel to appraise the loss pursuant to Insurance Code sections 2071, subdivision (a), and 10082.3. The court’s order further specified: “The appraisal panel may not make any insurance coverage determinations. If either party asserts that a loss or a type of loss is either excluded or not covered, it will not be the task of the appraisal panel to determine if the party is correct in its interpretation of the insurance contract. If the parties dispute coverage or causation as to an item of loss, such items, if any, shall be segregated and itemized in a separate category labeled as disputed items, specifying in a label or brief description the nature of the dispute. Appraisers cannot decide issues regarding . . . policy interpretation or causation, . . . or anything other than the amount of the disputed ‘loss.’ ” Citing *Lee I*, the order then instructed the panel: “[W]hile it is appropriate for the panel to assign values to items of loss where coverage or causation is disputed, it is not appropriate to assign loss values to items that the panel determines are undamaged or that demonstrably never existed. The panel is not required to assign a value to every item submitted to it for appraisal. If inspection reveals that an item is undamaged or never existed, the panel should not apply a loss value to the item.”

Site inspections occurred in February 2016 and the appraisal hearing took place over three days in late-February and early-March. The panel, which consisted of each party's appraiser and one umpire, issued its appraisal award in April 2016. The award listed the following amounts: \$172,366.11 for the replacement cost value of the building; \$168,918.79 for the actual cash value of the building; and \$10,240.00 for business income. The award explained the foregoing amounts did not include \$7,851.00 to PW Stephens for demolition or \$17,242.41 to Service Master for cleaning. The award further stated it was made without consideration of causation, coverage, or policy limits, and it did "not include or consider any increased costs from enforcement of any building, zoning or land use ordinance or law regulating the construction, repair or demolition of the building property."

Thereafter, Lee filed a petition to vacate the 2016 award on the following grounds: the award was procured by corruption, fraud, or other undue means (Code Civ. Proc.,² § 1286.2, subd. (a)(1)); both party appraisers were corrupt (*id.*, subd. (a)(2)); and the appraisers exceeded their powers and the award could not be corrected without affecting the merits of the decision upon the controversy submitted (*id.*, subd. (a)(4)). Lee also alleged the panel exceeded its powers by impermissibly making causation or coverage determinations, as evidenced by its failure to mention and value her claims of damage to units 11 and 12, and other claimed losses.

California Capital opposed Lee's petition to vacate, and on July 27, 2016, the trial court denied it. The court found insufficient evidence of corruption warranting a vacatur under section 1286.2, subdivision (a)(1) or (2), and determined that Lee failed to demonstrate the panel exceeded their powers such as to justify vacatur under section 1286.2, subdivision (a)(4). However, with regard to Lee's argument the panel exceeded

² All further statutory references are to the Code of Civil Procedure unless otherwise specified.

its powers by not assigning value to the claimed damage to units 11 and 12 and other items not listed in the award, the court, “out of an abundance of caution,” indicated it would remand to the panel for the limited purpose of clarifying the award.

In its remand order issued on August 15, 2016, the court asked the panel to clarify two issues: first, whether the panel considered Lee’s claims concerning units 11 and 12, and if so, whether those items were unmentioned because the panel found they were not damaged or not in need of repair; and second, whether the panel considered all of Lee’s other claims for property damage—“including all items in Units 3, 4, 7, 8, exterior and general conditions”—and if so, whether these items were unmentioned because the panel found they were undamaged, not in need of repair, or did not exist. The court directed the panel to issue an addendum to the award and to consider the portion of *Lee I* that advised “ ‘[i]n order to avoid disputes about whether a panel exceeded its authority by assigning a value of zero to certain claimed items of loss, the better practice may be to explain in the award why nothing was awarded.’ ”

On August 25, 2016, the panel submitted its addendum to the award. The panel clarified it considered Lee’s claimed losses regarding units 11 and 12, and the only repair costs it found appropriate were included as part of the \$17,242.41 amount for cleaning smoke residue. The panel had considered Lee’s claimed losses to all other portions of the property without regard to coverage issues. It carefully reviewed all evidence presented prior to issuing the original award, and it “specifically found that any allegedly damaged item for which we did not award repair costs had in fact not been damaged, or was not in need of repair.”

On September 16, 2016, California Capital served a petition to confirm the award by overnight mail. Thirteen days later, Lee filed an opposition brief arguing, among other things and for the first time, that the award should be vacated because the panel improperly made coverage decisions due to the court’s order excluding “code-upgrade” costs from the scope of the appraisal. California Capital challenged Lee’s requested

vacatur of the award as untimely, and her claim regarding the panel’s improper coverage decisions as unsupported.

On November 17, 2016, the court granted California Capital’s petition to confirm the award. The court found that Lee’s request for vacatur based on allegedly improper coverage decisions was untimely, and that in any event, Lee failed to set out a sufficient basis for vacating or correcting the award. The court then entered judgment in conformity with the award. Lee appealed.

DISCUSSION

A. Standard of Review

“Appraisal hearings are a form of arbitration and are generally subject to the rules governing arbitration. Judicial review of an arbitration, or appraisal award, is circumscribed. [Citation.] ‘ “Courts may not review either the merits of the controversy or the sufficiency of the evidence supporting the award.” ’ [Citation.] The court, however, shall vacate an appraisal award under certain circumstances” (*Kacha v. Allstate Ins. Co.* (2006) 140 Cal.App.4th 1023, 1031 (*Kacha*)). “The exclusive grounds for vacating an appraisal award are set forth in . . . section 1286.2, subdivision (a).” (*Lee I, supra*, 237 Cal.App.4th at p. 1165.) That statute provides, in pertinent part: “the court shall vacate the award if the court determines any of the following: [¶] (1) The award was procured by corruption, fraud or other undue means. [¶] (2) There was corruption in any of the arbitrators. [¶] . . . [¶] (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.” (§ 1286.2, subd. (a).)

“We review the trial court’s ruling on a challenge to an appraisal award under a de novo standard, drawing every reasonable inference to support the award. [Citation.] To the extent the court’s ruling rests on issues of disputed fact, however, we apply the substantial evidence test.” (*Kacha, supra*, 140 Cal.App.4th at p. 1031.)

B. Analysis

1. Court's Order Directing the Panel Not to Appraise Unincurred Code Upgrade Costs

As indicated, the trial court's November 2015 order excluded unincurred code upgrade costs from the appraisal's scope but specified that Lee could apply for such an appraisal at a later time. Lee first argues that this order required the panel to distinguish between "increased costs" due to application of building codes and "ordinary repair costs," thereby forcing it to engage in a coverage analysis in excess of its authority. This argument fails.

California Capital contends Lee forfeited this claim by not timely raising it below. We agree. A party cannot argue on appeal that an arbitrator exceeded his or her powers without having raised the objection below. (*Porter v. Golden Eagle Ins. Co.* (1996) 43 Cal.App.4th 1282, 1291.) " 'It would seem . . . intolerable to permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he [or she] is aware and thereby permitting the proceedings to go to a conclusion which he [or she] may acquiesce in, if favorable, and which he [or she] may avoid, if not.' " (*Ibid.*) Here, Lee did not raise this specific issue when opposing California Capital's motion to exclude "code upgrade costs" from the appraisal; nor did she make the contention in her own petition to vacate the award. Rather, she waited until California Capital petitioned to confirm the award and then raised the issue for the first time in her opposition, which she did not file within the 10-day statutory deadline. (§ 1290.6.)

Lee cites no authority supporting disregard of her forfeiture. Contrary to Lee's assertion, this is not a "pure legal issue on undisputed facts." Whether or not the court's order had the effect of forcing the panel to make improper coverage determinations as Lee claims is a factual issue. Alternatively, Lee contends "[i]t cannot logically be said the lower court was never given a chance to consider and rule on the issue" because Lee

did raise it in her untimely opposition to California Capital’s petition to confirm the award. However, section 1286.4 provides: “The court *may not vacate an award unless*: [¶] (a) A petition or *response* requesting that the award be vacated *has been duly served and filed . . .*” (Italics added.) Case law holds “[t]he filing and service deadline for a petition to vacate is jurisdictional; noncompliance deprives a court of the power to vacate an award unless the party has *timely* requested vacation in response to a petition to confirm.” (*Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538, 544–545, italics added.)

Even if Lee had preserved the claim, she fails to establish, and the record does not show, that the panel was forced to and did engage in coverage determinations in excess of its authority. (*Lopes v. Millsap* (1992) 6 Cal.App.4th 1679, 1685 [“[T]he burden is on the party attacking the award to affirmatively establish the existence of error by a proper record”].) The court’s November 2015 appraisal order directed the panel to exclude items falling within the Building Ordinance Provision of Lee’s CIG Property Plus endorsement. However, the court’s order also clearly commanded the panel not to make any insurance coverage determinations and directed as follows: “If either party asserts that a loss or a type of loss is either excluded or not covered, it will not be the task of the appraisal panel to determine if the party is correct in its interpretation of the insurance contract. If the parties dispute coverage or causation as to an item of loss, such items, if any, shall be segregated and itemized in a separate category labeled as disputed items, specifying in a label or brief description the nature of the dispute. Appraisers cannot decide issues regarding . . . policy interpretation or causation . . . or anything other than the amount of the disputed ‘loss.’ ”

Lee fails to point to anything in the record establishing that the panel actually made any improper coverage decisions. As California Capital observes, neither it nor Lee presented evidence regarding code upgrades in the appraisal, and neither argued any

of the claims fell within the code upgrade exclusion. Indeed, Lee's appraisal brief represented she was not making any code upgrade claims.

Lee relies mainly on the vacated 2012 award to support her argument. She claims the 2016 award is lower than the 2012 award, and the 2012 award itemized various claimed losses that the 2016 award did not, thus evidencing improper coverage decisions. This lacks merit. As stated in *Lee I*, "every reasonable inference is drawn to support an award," and "a court cannot assume that an appraisal panel exceeded its authority by awarding nothing for a particular item. Where a reasonable inference can be drawn that the item was undamaged, a court may not vacate the award simply because nothing was awarded for that item." (*Lee I, supra*, 237 Cal.App.4th at p. 1173.) On its face, the 2016 award explicitly states it was made without consideration of causation or coverage issues. Likewise, the addendum to the award states the panel made no coverage determinations and "specifically found that any allegedly damaged item for which we did not award repair costs had in fact not been damaged, or was not in need of repair." While Lee points to differences between the awards, she fails to carry her burden of demonstrating those differences are actually based on improper coverage decisions.

As a final note on this point, California Capital points out that the 2016 award is actually higher than the 2012 award. That is because the 2016 award does not include the values for payments to PW Stephens for demolition and to Service Master for cleaning separate as part of the replacement cost value and actual cash value, while the 2012 award included those amounts in the replacement cost value and actual cash value. Lee does not respond to this, much less refute it.

For the reasons stated, we reject Lee's claim that the court order excluding unincurred code upgrade costs from the appraisal forced the panel to engage in impermissible coverage determinations.

2. Panel's Failure to Assign Value to All Claimed Items and Trial Court's Remand of the Award Back to the Panel

Next, Lee contends that the panel exceeded its powers by failing to assign value to all the items she claimed, and that the award's silence on certain claims evidences the panel's improper coverage determinations. These arguments do not persuade us.

As our prior decision in *Lee I* stated: “the panel is not required to assign a value to every item submitted to it for appraisal. If inspection reveals that an item is undamaged or never existed, the panel should not apply a loss value to the item.” (*Lee I, supra*, 237 Cal.App.4th at p. 1175.) Notably, the trial court's order of appraisal in this case quoted this portion of *Lee I*. It is true in *Lee I* we also said: “In order to avoid disputes about whether a panel exceeded its authority by assigning a value of zero to certain claimed items of loss, the better practice may be to explain in the award why nothing was awarded.” (*Id.* at pp. 1173–1174.) This, however, was clearly not a mandate for inclusion of such explanations.

Lee contends that the award's silence on these claims evidences improper coverage determinations in excess of the panel's authority. This fails, however, for the same reasons above. That is, we must draw all reasonable inferences in support of an award, and we cannot assume the panel exceeded its authority by awarding nothing for particular items. Additionally, both the award and its addendum explicitly state the panel made no coverage determinations, and Lee points to no evidence to the contrary. Because California Capital argued and presented evidence that the items at issue were not damaged or in need of repair, the trial court could reasonably infer that the panel assigned them no value after because it concluded the items were undamaged. (*Lee I, supra*, 237 Cal.App.4th at p. 1173 [“Where a reasonable inference can be drawn that the item was undamaged, a court may not vacate the award simply because nothing was awarded for that item”].)

Lee also contends the trial court exceeded its authority by remanding the award to the panel to clarify why no value was awarded for such items. We disagree. Case law establishes that “[t]he absence of a statutory provision authorizing amendment of an award does not deprive the arbitrator of jurisdiction to do so.” (*A.M. Classic Construction, Inc. v. Tri-Build Development Co.* (1999) 70 Cal.App.4th 1470, 1476 (*A.M.*)). “[A]rbitration law permits arbitrators to issue an amended award to resolve an issue omitted from the original award through the mistake, inadvertence, or excusable neglect of the arbitrator if the amendment is made before judicial confirmation of the original award, is not inconsistent with other findings on the merits of the controversy, and does not cause demonstrable prejudice to the legitimate interests of any party.” (*Id.* at p. 1478; see *Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 658–660 (*Delaney*) [award may be amended any time before judicial confirmation].) Here, as in *A.M.*, the addendum to the award was issued prior to its judicial confirmation and was consistent with the original award. The addendum simply clarified why the panel assigned no value to certain losses claimed by Lee, and resulted in no apparent prejudice to any party’s legitimate interests. (See *A.M.*, *supra*, 70 Cal.App.4th at pp. 1476–1477.)³

³ Lee relies on *Law Offices of David S. Karton v. Segreto* (2009) 176 Cal.App.4th 1 (*Segreto*) to argue the trial court here was required to confirm the award upon denying her petition to vacate. Lee’s reliance on *Segreto* is misplaced. In *Segreto*, the trial court denied an attorney’s petition to correct an arbitration award, but did not thereafter confirm the award. (176 Cal.App.4th at pp. 4–5.) The attorney then sought and obtained an amended award directly from the arbitrators, and petitioned to confirm the amended award, which the trial court again denied. (*Id.* at pp. 6–7.) *Segreto* held that when the trial court denied the attorney’s initial petition to correct the award, it was required by section 1286 to confirm it. (*Id.* at pp. 7–8, 11.) *Segreto*, however, did not address whether the rule set forth in *A.M.* and in *Delaney* permitting amendment at *any time* before judicial confirmation applied in that case. *Segreto* also does not address the situation here: where a *court*, faced with a petition to vacate, remands an award to an appraisal panel to obtain clarification regarding its assignment of no value to certain claimed items, then confirms the award. (§ 128, subd. (a)(8).) We decline to interpret *Segreto* as precluding the trial court’s remand order seeking clarification of the panel’s award.

In any event, Lee has not explained how the trial court's remand or the panel's addendum provides grounds for vacating the award. (§ 1286.2; *Lee I, supra*, 237 Cal.App.4th at p. 1165 [“The exclusive grounds for vacating an appraisal award are set forth in Code Civ. Proc., § 1286.2, subdivision (a)”].) With or without the addendum, Lee fails to show that the panel made impermissible coverage determinations. (*Davey Tree Surgery Co. v. International Brotherhood of Electrical Workers* (1976) 65 Cal.App.3d 440, 450 (*Davey*) [“[A]n award will not be vacated for any error that does not prejudice the rights of the party complaining”].)

Lee also claims the court's remand order and the panel's resulting addendum violated Evidence Code section 703.5. Evidence Code section 703.5 provides: “[N]o arbitrator . . . shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding” On this point, Lee's opening brief fails to clearly argue how exactly the remand order or the addendum constitutes “testimony” within the meaning of the statute. Then in her reply, Lee acknowledges neither the remand order nor the addendum qualifies as “testimony” but asserts, cursorily, that the panel's response was “testimony.” Absent reasoned argument supported by authority, we consider this claim waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

To the extent Lee argues the questions in the remand order were inappropriately leading in form, this contention also appears forfeited. (*Doers, supra*, 23 Cal.3d at p. 184, fn. 1.) The questions posed to the panel were formulated by the trial court with an opportunity for input from the parties. Lee does not claim to have raised her instant objections to the form of the questions below. In any event, Lee demonstrates no prejudice. (See *A.M., supra*, 70 Cal.App.4th at p. 1477 [rejecting contention arbitrator's issuance of an amended award, upon ex parte request by plaintiff's counsel, prejudiced defendants because defendants did not show arbitrator would have reached a different result had notice been given]; *Davey, supra*, 65 Cal.App.3d at p. 450.)

In sum, we do not agree that the panel or the trial court exceeded its powers by any of the actions discussed above.

3. Claim That Lee's Appraiser Was Corrupt

Finally, Lee contends the award must be vacated pursuant to section 1286.2, subdivision (a)(1) and (2), because her appraiser, William Thomas, was corrupt. In support, Lee points to evidence that Thomas contacted her adjuster, Kevin Dawson, during the appraisal proceedings, and told Dawson he had experienced financial difficulty. Thomas also relayed to Dawson that California Capital's appraiser, Gary Halpin, had already billed more than \$50,000 while Thomas had not been paid. Thomas told Dawson that Halpin said Thomas should be paid comparably. Thomas also asked Dawson how he could make more money. Lee now claims Thomas was "goading" Dawson, and thus Lee, to match California Capital's payments and was implicitly threatening an adverse outcome in the appraisal. This is meritless.

This claim relies solely on the declaration of Dawson that was submitted to support Lee's petition to vacate the award. Although Dawson's declaration essentially stated his contacts with Thomas made him uncomfortable and made him question Thomas' ability to act as a disinterested appraiser, Dawson said nothing of this while the appraisal proceedings were ongoing. It was not until *after* the panel issued its award that Lee raised the issue in her petition to vacate. It is notable that Dawson's declaration did not address the point in time at which Dawson communicated his contacts with Thomas to Lee, but in opposition to Lee's petition to vacate, California Capital argued Lee waived the claim by not raising it during the appraisal proceedings. Lee never countered that argument in her reply, and the trial court found the issue waived when it denied Lee's petition to vacate. Lee does not now argue the trial court erred on this point, and she presents no argument for deeming the issue preserved on appeal. (*Porter, supra*, 43 Cal.App.4th at p. 1291.)

In any event, there is no evidence the award was procured by corruption, and no evidence Thomas was corrupt. In his declaration, Dawson stated that during the site inspection, Thomas told him that he was intending to semi-retire, and that previously—at some unspecific point in time—he experienced financial problems and had moved to a smaller home. Although Dawson’s declaration shows he had multiple conversations with Thomas, it was during only one of those conversations that Thomas compared his billing amounts to those of Halpin. In that same conversation, Thomas said he felt he should be paid comparably to Halpin, and he asked Dawson—given Dawson’s experience—how he could make more money. When Dawson explicitly asked if Thomas was asking Lee to pay him more in the current matter, Thomas said “no,” just that he wanted to make more “in the future.” While inappropriate, this exchange did not amount to evidence that Thomas was corrupt, much less corrupt to Lee’s substantial prejudice. (*Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 826 [parties seeking vacatur on grounds of corruption must show prejudice from alleged corruption].)

Lee cites no analogous authority supporting a conclusion that Thomas should be considered corrupt under these circumstances. Her sole citation is to *A.M.*, *supra*, 70 Cal.App.4th 1470, which does not aid her position. In *A.M.*, the court found the plaintiff’s counsel acted inappropriately by contacting the arbitrator ex parte to ask that he amend the award to address an omitted cause of action. The court, however, also found the record did not establish the amended award was procured by corruption, fraud or other undue means because there was no evidence “the arbitrator was improperly influenced or actually considered evidence outside the original arbitration proceedings such that [defendants] needed a further opportunity to be heard.” (70 Cal.App.4th at pp. 1475–1476, 1478.) Here, Lee points to no evidence showing that Thomas was improperly influenced or did anything to deprive Lee of a fair and impartial hearing.

For the reasons stated, we reject Lee’s contention that the award must be vacated pursuant to section 1286.2, subdivision (a)(1) and (2).

DISPOSITION

The judgment is affirmed. California Capital is entitled to recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

Fujisaki, J.

WE CONCUR:

Siggins, P.J.

Petrou, J.

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